Huang Ching Hwee v Heng Kay Pah & Anor

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 949 OF 1990
GOH JOON SENG JC
7 DECEMBER 1990

Land Law — Agreement for sale and purchase of property — Vendor carried out renovations — Whether renovations required approval of Building Authority — Whether unauthorized renovations a latent defect in title entitling purchaser to rescind sale and purchase agreement

The plaintiff granted to the defendants an option to purchase a piece of property together with the building erected thereon ('the property'). The defendants exercised the option by paying a deposit. The defendants' solicitor then wrote to the plaintiff's solicitors enclosing the usual requisitions which included, inter alia, the question whether there had been any renovation, addition or alterations made to the property, and if so, whether the necessary approvals had been obtained. There was an exchange of correspondence between the solicitors and subsequently the plaintiff's solicitors replied that the plaintiff had carried out various renovations to the property and listed out those renovations.

The defendants' solicitor made various queries regarding plans for the renovations. Subsequently the defendants carried an inspection of the property from the gate of the property. On 21 August 1990, the defendants' solicitor wrote to the plaintiff's solicitors listing out the various works carried out on the property which they said required planning approval but which had not been obtained. Such works included, inter alia, the roofs over the patio and the main entrance, the demolition of the garage, rooms, roofing and other structures and the erection of a timber fence, toilet, tinted aluminum glass panes and roofing. The defendants, thereupon, rescinded the sale and purchase agreement ('the agreement') and demanded the refund of the deposit paid.

The plaintiff began the present proceedings for a declaration that the defendants were not entitled to rescind the agreement and other consequential orders.

Held, dismissing the plaintiff's application:

(1) The renovations listed in the defendants' letter of 21 August 1990 were 'building works' within the meaning of s 2 of the Building Control Act (Cap 29, 1990 Ed), and therefore required the approval of the Building Authority. Such approval had not been obtained.

(2) The general rule in sale and purchase of property is caveat emptor. However a vendor must disclose to a purchaser any latent defects in title. As no plans had been submitted to the Building Authority in respect of the unauthorized works, the defendants could not have disclosed the unauthorized works on the exercise of reasonable care. As such, the unauthorized renovations were a latent defect. However the defendants could only rescind the sale and purchase agreement if the unauthorized renovations amounted to a latent defect in title.

(3) The unauthorized renovations not disclosed to the defendants at the time of contract were a latent defect in the title entitling the defendants to rescind the agreement as the plaintiff himself had carried out the alterations and withheld this information from the defendants

(4) The suggestion without prejudice and without admission of liability from the plaintiff's solicitors' letter of 22 August 1990 to hold a reasonable sum to apply for and obtain the requisite approval (if any) for the alleged alterations did not amount to an undertaking to rectify the defect at the plaintiff's expense on completion.

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 128 of 1990.]

Cases referred to

1 *Maxwell & Anor* v *Pinheiro & Anor* (1979) 46 LGRA 310 (refd)
2 *Vukelic (A&R)* v *Sadil-Quinlan & Associates & Anor* (1976) 13 ACTR 3 (refd)
3 *Watkin* v *Wilson* [1985] 1 NZLR 666 (refd)
4 *McInnes* v *Edwards* [1986] VR 161 (refd)
5 *Borthwick* v *Walsh* (1980) 41 LGRA 144 (refd)
6 *Fletcher* v *Manton* (1940) 64 CLR 37 (distd)

Legislation referred to

Building Control Act (Cap 29, 1990 Ed) ss 2(1), 4, 5, 13(1), 20(1)
Local Government Act 1919 (New South Wales) [Aust] s 317A
Slum Reclamation and Housing Act 1938 [Aust] s 8

Foo Soon Yien (Miss) for the plaintiff.
Johns Berny for the defendants.

Cur Adv Vult

Goh Joon Seng JC: The plaintiff is the owner of all that piece or parcel of land known as lot 31-80 mukim 17 with the house erected thereon and known as No 4 Joan Road, Singapore (hereinafter referred to as 'the said property'). He purchased it on 2 October 1989.

By an option dated 11 May 1990 the plaintiff in consideration of the sum of $25,000 granted to the defendants an option to purchase the said property at the price of $2,500,000. The said option was exercised by the defendants on 1 June 1990 whereupon the sum of $225,000 being balance of 10% deposit less the option fee of $25,000 was paid to the plaintiff's solicitors as stakeholders pending completion, 24 August 1990 being the completion date.

On 12 June 1990 the defendants' solicitor wrote to the plaintiff's solicitors enclosing the usual requisitions (exh HKP1 annexed to the affidavit of Heng Kay Pah and Yang Mee Leng filed on 28 September 1990) and stating:

> We understand from our clients that your client after his purchase of the abovementioned property carried out extension renovation/alterations/additions to the building on the said property. If so please let us have the approved plan in respect of such renovation/additions/alterations carried out.

The requisitions were returned on 20 June 1990. On the pertinent question 'Have there been any renovations, additions or alterations made to the property?', the answer was 'Please make your own searches.'

Similar answer was given to the further question: 'If there have been, were the necessary approvals thereof

obtained from the Competent Authority? Please give particulars and replies of any approvals obtained.'

On 25 June 1990 the plaintiff's solicitors reverted on the renovations: 'We are instructed by our client that he has only carried out renovations to the interior of the property and does not have any plans in respect of the said renovations.'

On 2 July 1990 the defendants' solicitor wrote to the plaintiff's solicitors on this issue:

> You have stated that your client carried out renovations to the interior of the property and that your client does not have any plans in respect of such renovations. However please let us know the nature of the renovations done to the interior of the property.

On 19 July 1990 the plaintiff's solicitors replied:

> We refer to your letter dated 2 July 1990 and are instructed by our client that he has carried out the following renovations to the above property —
>
> (1) new roofing and tiles, to external of dining and kitchen areas, inclusive of ceramic tiling to floor;
> (2) patio to change only roofing to pitch with roof tiles, to match and ceramic tiling to floor;
> (3) new toilet for servant's room complete with aluminium sliding doors and sanitary fittings;
> (4) replace all soil pipes and external piping to stainless steel pipes;
> (5) replace soil pipes to front and back garden;
> (6) turfing to front and back garden;
> (7) decorative fins to all windows for the above property; and
> (8) construct railing to master bedroom balcony.

It is to be noted that most of the above works are external rather than internal.

On 20 July 1990 the defendants' solicitor wrote to the plaintiff's solicitors enclosing a draft transfer for approval and referred to para 3 of their letter of 2 July 1990 requesting for plans for alterations carried out by the previous owner and approved on 10 August 1985.

On 25 July 1990 the plaintiff's solicitors replied stating:

> ... We are instructed by our client that he does not have the approved plans. That is for those works carried out by the previous owner.

On 28 July 1990 the defendant's solicitor wrote to the plaintiff's solicitors stating:

> With reference to your letter of 19 July 1990, we note under item (3) therein relates to a 'new toilet'. If it is an addition please confirm that the necessary approval has been applied and obtained. Kindly let us have the approved plan in respect of the 'new toilet'.

Receiving no reply on the new toilet, the defendant's solicitor again raised this matter by letter of 8 August 1990 requiring to be furnished with:

(g) Approved plan or copy thereof in respect of the new toilet. However if the new toilet referred to in your letter of 19 July 1990 is not a new structure or an addition please confirm that the 'new toilet' referred to was an existing structure that has been renovated and hence no approval is required from the relevant authorities.

Still receiving no reply on the new toilet the defendants' solicitor on 13 August 1990 wrote to the plaintiff's solicitors referring in particular to the new toilet. This precipitated a reply from the plaintiff's solicitors on 14 August 1990 stating:

> Kindly be informed that the toilet referred to in para 3(g) of your letter is an existing toilet and no approval is required from the relevant authority.

On the same day, the plaintiff's solicitors wrote to the Chief Assessor:

> We are instructed by our client to inform you that he has not carried out any of the actions listed in the said return.

This obviously could not be true given the list of renovations admitted to have been carried out vide their letter of 19 July 1990 quoted above.

On 20 August 1990 the first defendant, his solicitor and one Raymond Kuah Leong Heng, a registered architect, inspected the said property from outside the gate. The said Raymond Kuah Leong Heng was involved in the renovations carried out by the previous owner. His name appeared on the plan approved on 20 August 1985 which plan the defendants were eventually able to obtain from the Building Authority. Based on the advice of the said Raymond Kuah Leong Heng, the defendants' solicitor wrote to the plaintiff's solicitors on 21 August 1990 stating that the following works carried out by the plaintiff required planning approval:

(1) the roof over the patio;
(2) the mono-pitch roof to the main entrance;
(3) the demolition of the garage and servant's room including the toilets;
(4) the metal structure where the garage, servant's room and toilets stood;
(5) the demolition of the covered roofing structure at the rear;
(6) the railing at rear flat terrace over lounge;
(7) the timber fence;
(8) the tinted aluminium glass panes at lounge area;
(9) the toilet in the servant's room;
(10) the treatment of window surrounds;
(11) the new roofing to external of dining and kitchen area.

The external alterations on the front portion of the building can be seen by a comparison of the photograph taken in June 1989 and that taken in May 1990 being collectively marked as exh 'HKP2' annexed to the affidavit of the defendants filed on 28 September 1990. The defendants thereupon rescinded the sale and purchase agreement and demanded the refund of the 10% deposit.

The plaintiff denies that the defendants are entitled to rescind the same and files these proceedings for a declaration that the defendants are not entitled to rescind the agreement of sale and purchase and for other consequential orders.

The issues are therefore:

(1) did the plaintiff's renovation works require approval of the Building Authority; and
(2) if they did and no approval was obtained would that constitute a defect in title entitling the defendants to rescind.

On (1), 'building works' in so far as it relates to this matter has been defined in s 2(1) of the Building Control Act (Cap 29, 1990 Ed) ('the Act') as:

> (a) the erection, extension or demolition of a building;
> (b) the alteration, addition or repair of a building;

There is no doubt that the renovations listed in the defendants' letter of 21 August 1990 were 'building works' within the meaning of s 2 of the Act.

Section 5 of the Act provides:

> Except as otherwise provided in this Act, no person shall commence or carry out or permit or authorize the commencement or carrying out of any building works unless —
>
> (a) the Building Authority has approved all the plans of the building works under section 6; and
>
> (b) there is in force a permit granted by the Building Authority under section 7 to carry out the building works shown in the approved plans of the building works.

By virtue of s 4 of the Act, the requirement under s 5 does not apply to temporary buildings and building works enumerated in the Schedule to the Act. The Schedule does not apply to the works herein. Hence the renovation works carried out required the approval of the Building Authority.

On (2), since approval was required but no such approval was obtained these works were unauthorized. Consequently, under s 13(1), the Building Authority may require alteration or demolition of the said works. By s 20(1) such part of the building might not be occupied unless a certificate of statutory completion has been obtained. No such certificate could be obtained unless the building works have been approved or such requisite waiver obtained. Do the potential consequences of these unauthorized renovations not disclosed to the defendants at the time when the contract was entered into constitute a latent defect in the title entitling the defendants to rescind the agreement for sale and purpose? The principle in the sale and purchase of land as stated in *Emmet on Title* (18th Ed) at p 119 is caveat emptor:

> The general rule of contract is that a vendor is under no duty to disclose material facts to a prospective purchaser (*Bell* v *Lever Bros* [1932] AC 161) and this applies to contracts for sale of land (*Terrene Ltd* v *Nelson* [1937] 3 All ER at p 744). Thus in *Greenhalgh* v *Brindley* [1901] 2 Ch 324 a vendor sold a house with windows overlooking a stranger's land but without disclosing that he enjoyed access of light only by the stranger's licence, nevertheless, the vendor obtained an order for specific performance. However there is a term implied into a contract for the sale of land that a good title should be shown by the vendor (*Re Ossemsly Estates Ltd* [1937] 3 All ER 774 at p 778), ie that he is selling the fee simple free from incumbrances (*Hughes* v *Parker* [1841] 8 M & W 244). The implication of such a term does not arise if the purchaser has knowledge, actual or constructive, at the time of the contract, of any irremediable defect in the vendor's title (per Romer LJ in *Timmins* v *Moreland Street Property Co Ltd* [1958] Ch 110 at p 132). Consequently it may be said that a prospective vendor of land has a duty of disclosure to the extent necessary to prevent the implied arising. In other words, a vendor should disclose to prospective purchasers any defects in his title which are latent and not patent.

Were the authorized renovations a latent defect in title? As no plans had been submitted to the Building Authority for approval, the defendants' requisitions to such authority could not discover such unauthorized work. The defendants could not have discovered it by the exercise of reasonable care. Hence it is latent but does it amount to a latent defect in title which entitles the defendants to rescind?

In *Maxwell & Anor* v *Pinheiro & Anor*,[1] the Supreme Court of New South Wales held that the fact that, in consequence of certain works which included a kitchen or kitchen alcove having been carried out without approval, the Local Council under s 317A of the Local Government Act 1919 of New South Wales might lawfully require the demolition or rectification of a building on land the subject matter of a contract for sale and might itself enter into the land to carry out the demolition or rectification, is, unless the purchaser knew of or had reason to suspect that fact at the time when the contract was entered, a latent defect in title, which defect the purchaser is entitled to have removed either by having the work rectified by the vendor at the vendor's expense or having the vendor obtain a certificate under s 317A of the Act, failing which the purchaser is entitled to rescind. At p 318 Powell J said:

> Quite untutored by authority I would have thought that the fact that, in consequence of work having been unlawfully carried out, a council might lawfully require the demolition or rectification of a building on land the subject of a contract for sale and might itself enter the subject land to carry out the work of demolition or rectification was, unless the purchaser knew, or had reason to suspect that fact at the time of entering into the contract, a latent defect in title, which defect the purchaser was entitled to have removed either by having the work rectified by the vendor at the vendor's expense or having the vendor obtain a certificate under s 317A of the Act. The authorities (see *Carlish* v *Salt*; *Fletcher* v *Manton*) would seem to demonstrate that this is certainly so in a case in which a council had proceeded to issue a notice under s 317B(1A) of the Act. *For my own part, I see no logical reason why the position should not be the same even though no such notice has, in the relevant case, been served.* (Emphasis is mine.)

In *Vukelic (A & R)* v *Sadil-Quinlan & Associates & Anor,*[2] the vendor sold to the purchaser the unexpired residue of the Crown lease of a block of land in the Australian Capital Territory together with the rights of the Crown lessee in respect of the building and other improvements on that block. The vendor's predecessor in title had erected a garage on the land without any approval from the local authority and no certificate of fitness pertaining thereto was obtained. The Supreme Court of the Australian Capital Territory held this to be a defect in title for which the purchaser was entitled to rescind the contract. Connor J at p 10 says:

> Section 54 of the Building Ordinance 1972 provided a penalty of $400 for occupying or using a portion of a building which was not the subject of a certificate. Section 55 provided that if a person continues the offending use after he has been convicted under s 54, the building controller may require him to vacate the building and if he does not do so, he is guilty of a further offence, again punishable by a fine of up to $400 and of up to $50 for each day of continued occupation. All these consequences could flow to the purchaser if he chose to park his car in the garage. Moreover, by the provisions of s 46 of the Ordinance, in the form in which it was at the time of the transactions, the building controller was empowered to direct the owner of the land to demolish a building which had been erected without a permit, as this garage was. These provisions impose on the purchaser a liability of uncertain amount at some future time and constituted in my view a defect in the title of the premises.

Since this was not rectified the purchaser was entitled to treat the contract as at an end and have his deposit refunded to him.

In *Watkin* v *Wilson,*[3] the vendor extended a store room into a room for general living purposes. No building permit was applied for and hence none given. Within a few weeks after the purchaser took possession the purchaser was required by the Local Authority to demolish the extension and rebuild it according to the relevant by-laws. The New Zealand High Court applied *Vukelic (A & R)* v *Sadil-Quinlan & Associates & Anor*[2] and *Maxwell* v *Pinheiro & Anor.*[1] The purchaser was awarded costs of the demolition and rebuilding and damages. Per Henry J at p 670:

> The objection to title does not relate to any requirement of the Land Transfer Act 1952, and accordingly the common law rule is to be applied. That rule puts a vendor under a duty to make good title to the estate or property he has contracted to sell. The contract here embraced land and buildings. As it transpired, good title to the building was not given because a portion of it had been erected without a permit and did not comply with the relevant bylaws. I find as a fact that such was the position, and I am also satisfied on the evidence that the Council can require demolition of the addition in question. It seems to me that there is here a latent defect in title in respect of part of the subject-matter of the contract. A similar conclusion was reached by Connor J in *Vukelic* v *Sadil-Quinlan & Associates* (1976) 13 ACTR 3, Powell J in *Maxwell* v *Pinheiro* (1979) 46 LGRA 310 and McLelland J in *Borthwick* v *Walsh* (1980) 41 LGRA 144. I do not consider that there was merely a defect in quality, as is usually the position in respect of a town planning restriction (*Dell* v *Beasley* [1959] NZLR 89) or a building line restriction as in *Harris* v *Weaver* [1980] 2 NZLR 437 where the ownership of the land subject to the restriction remained in the vendor and could be vested in the purchaser. These are to be compared with *Moss* v *Perpetual Trustees Estate and Agency Co of New Zealand Ltd* [1923] NZLR 264, where a frontage set back requirement was held to be a defect in title because the vendor was obliged to dedicate a strip of land in question. The susceptibility of part of the building to a demolition order was not something known to the plaintiff, nor, if that be relevant, do I find that there was anything which required her to make inquiry of the local authority and ascertain the existence of the defect. There has therefore, in my view, been a breach of the implied term.

On the other hand there is the decision of the Supreme Court of Victoria in *McInnes* v *Edwards*[4] wherein the purchaser entered into an agreement with the vendor on 11 May 1985 for the purchase of the property. Completion was due on 11 July 1985. Before the vendor became the sole owner of the property alterations had been carried out in contravention of the Victorian Building Regulations 1983 thus empowering the council to order rectification demolition or removal of the offending works. The vendor was not aware of the contravention.

On 14 May 1985 the purchaser's solicitors served on the vendor's solicitors the usual requisitions on title:

> Have the buildings or improvement situated on the property sold been built, altered or added to in contravention of the Uniform Building Regulations or any Council By-laws or any Statutory Regulations in relation thereto, or where required without a permit or other authority to make or carry out such building alterations or additions or have such building alterations or additions been carried out not in accordance with the plans approved by the municipal council.

The vendor's reply was: 'Not to the vendor's knowledge.'

On enquiry from the purchaser an officer of the City of Brighton made an inspection and the offending alterations came to light. Kaye J dismissed the purchaser's application for declaration that the existence of the illegal alterations constituted a defect in title. At p 168 he said:

> In my opinion, the ratio to be extracted from the High Court authorities was not reflected in the decision of *Vukelic* v *Sadil-Quinlan & Associates* (1976) 13 ACTR 3 and *Borthwick* v *Walsh* (1980) 41 LGRA 144: Powell J's view in *Maxwell* v *Pinheiro* (1979) 46 LGRA 310 at p 311, expressed as a conclusion from authorities, in my respectful opinion, was not accepted, if not rejected, by the High Court in *Fletcher* v *Manton* (1940) 64 CLR 37 to which his Honour referred.
>
> From those authorities, I conclude that at the material time for the purpose of conveyance for determination whether a defect in title exists is at the time when the parties entered

into their contractual relationship. The existence then of an order made or direction given in the exercise of a statutory power imposing a burden or charge on land or the improvements thereon constitutes a latent defect in title. However, the mere existence of circumstances which create the possibility or probability or risk that the property will at a future date be subject to a statutory charge or burden does not constitute a latent defect in title.

Returning to the present application, at the time of the making of the contract, alterations to the house had been made without the Council's approval. That state of affairs per se did not and does not create an encumbrance, charge or burden upon the property. It gives rise merely to a potential situation out of which a statutory liability might be created or imposed by the Council exercising its powers under regs 3.2(1) and 3.2(3) of service of both a show cause notice upon the owner of the property and in the event of non-compliance, a notice to alter, demolish or remove the building. However, although the power to serve a show cause summons is mandatory, it is within the Council's discretion to serve a notice to alter, demolish or remove. Thus, for any one of a number of reasons the Council might decide not to exercise those powers which create the necessary statutory liability. But those powers, not having been exercised by the Council, there is not a latent defect in the title to the property agreed to be sold.

Thus the Supreme Court of Victoria departs from the decisions of the Supreme Court of the Australian Capital Territory in *Vukelic (A & R)* v *Sadil-Quinlan & Associates & Anor*,[2] and *Borthwick* v *Walsh*[5] and *Maxwell & Anor* v *Pinheiro & Anor*,[1] both decisions of the Supreme Court of New South Wales. In so departing, Kaye J suggested that those cases were not consistent with the decision of the High Court of Australia in *Fletcher* v *Manton*.[6] This was a majority decision with one dissenting judgment. Stated briefly the facts were that pursuant to the provision of s 8 of the Slum Reclamation and Housing Act 1938, the Housing Commission on 8 March 1940 declared a row of terrace houses which had deteriorated, unfit for human habitation and directed its demolition.

On 21 March 1940 the contract of sale of the land 'together with the brick terrace erected thereon' was entered. Both parties did not know of the declaration. The commission posted notice of the declaration on 1 April 1940 and it was received by the vendor on 3 April 1940, ie after the date of the sale agreement. The receipt of the notice was subsequently disclosed in the replies to the purchaser's requisitions. The High Court of Australia held that under s 8 the direction to demolish the terrace did not become effective until its receipt by the vendor on 3 April 1940 when the purchasers were then the equitable owners by virtue of the sale agreement of 21 March 1940 and therefore the property was at the purchaser's risks. Accordingly the loss due to the demolition by the vendor in compliance with the notice was to be borne by the purchaser and the purchaser was not entitled to rescind the contract. Dixon J at p 48 said:

In this state of facts Lowe J, in my opinion was right in treating the matter as governed by the application of the well-established rule of equity that when a valid contract for the sale of land is made and the vendor in the event makes a good title, then, as from the date of the contract, the purchaser is to be considered the owner of the land and, by consequence, must suffer whatever loss or detriment that may after that time fortuitously befall the property or be placed by the law upon the person filling the character of owner.

The result of the application of the rule to the circumstances of the present case depends upon a nicety. For before 21 March when the contract was made, if the proceedings of the Housing Commission had advanced to the stage of actually affecting the ownership of the land by the declaration they had adopted on 8 March, the loss would have fallen on the vendor, who, except by some express term of the contract, could scarcely have succeeded in transferring the loss or burden to the purchasers. The real question appears to me to be whether the declaration of 8 March ought or ought not to be considered as then presently affecting the ownership of the land or, in other words, subject to the owner's right of appeal as being definitive of the owner's duty to demolish, service amounting to no more than a condition precedent to legal enforcement.

Upon consideration I have come to the conclusion that the making of the declaration ought not to be so regarded. The Housing Commission are an administrative body authorized to take a course adverse to the owner of land. They are not pronouncing a judicial sentence or decree but giving a direction or addressing a command to a person occupying the character of owner. What the commission do before issuing the direction or command to the person concerned, that is, before service of the declaration, is inchoate and affects only themselves and their officers. They are authorized to deal with the owner and ownership, that is to say, the owner of land as such. The statute means that the blow shall fall on the owner for the time being, and it specifies the means or occasion by which it shall take effect. Whoever is the owner at that moment must suffer the consequence. It is at this point that the equitable rule is invoked. The rule determines that for such purposes 'ownership' shall be regarded as passing from vendor to purchaser at the date of the contract. *It must be remembered that the parties were bargaining for the transfer from one to the other of slum property liable under a general Act of Parliament to be affected at any moment of time by service of a demolition order.* Once it is seen that ownership with all its risks is in equity transferred from the moment of the contract, then no anomaly can be felt in imposing on the purchasers the burden arising from the promulgation afterwards of an order of the Housing Commission, though before the date of the contract proceedings within the commission had, without the knowledge of either party, advanced up to the final point before notification.

The chief contentions of the purchasers in support of the appeal against the decision of Lowe J consisted less in an attempt to show that the ownership was affected before the date of the contract by the declaration than in efforts to establish that the case was not governed at all by the doctrine that in equity ownership passed on the making of a valid contract. It was said that the obligation of the vendor was to maintain up to the day fixed for completion a good title to the property sold and then to transfer or convey it, and that here on the very face of the contract the property sold was shown as not merely the land but also

the buildings. The answer to this contention appears to me to be that the description contained in the words 'land ... together with brick terrace erected thereon' imports no warranty or condition as to the continued existence or state of the terrace at the date of completion. It describes the subject matter of the contract as it stands at the date of the contract. If fire, lightning or tempest had destroyed or damaged the terrace after the making of the contract, these words could not have been relied upon to remove the case from the application of the ordinary equitable doctrine under which the loss would have fallen on the purchasers.

The argument that the matter was one of title seizes hold of the fact that service of the order or declaration by the commission operated to restrict or control the enjoyment of the full rights of ownership. The truth is, however, that it amounts only to a temporary restriction of rights as ancillary or incidental to the main purpose of altering the nature of the physical thing by demolishing the buildings. What has actually happened is that between the date of the contract and that of completion, the terrace has been demolished at the order of a public authority. If the order had been effective as a restriction of rights before the contract was made, it would have been another matter altogether. *Again, if the vendor had known that the making of an order was even under consideration and had failed to disclose his knowledge to the purchasers, the contract might have been voidable and, at all events, could hardly have been enforced specifically.* (Emphasis is mine.)

Thus in *Fletcher* v *Manton*[6] Dixon J besides pointing out that the parties therein were bargaining for the transfer from one to the other of slum property liable under the Slum Reclamation and Housing Act of 1938 to be affected at any time by the service of a demolition order also added a rider to his conclusion which clearly shows that if the vendor had known that the making of the order was under consideration by the Housing Commission and had failed to disclose this to the purchaser the contract might have been voidable and at all events, could hardly have been enforced specifically.

In the application before me the plaintiff himself carried out illegal alterations and withheld this information from the purchasers. The conclusion in *Fletcher* v *Manton*[6] should therefore not be applied. The suggestion without prejudice and without admission of liability by the plaintiff in his solicitors' letter of 22 August 1990 to 'withhold a reasonable sum of $50,000 to apply for and obtain the requisite approvals if any to the alleged alterations and improvement works' did not amount to an undertaking to rectify this latent defect at his expense on completion. Accordingly, the plaintiff's application is dismissed with costs.

Application dismissed

Solicitors: *Bernard Rada & Lee; Johns & Co.*

Reported by *Teoh Ai Lin*

Standard Chartered Bank v Chip Hong Machinery (S) Pte Ltd & Anor

HIGH COURT (SINGAPORE) — WRIT OF POSSESSION NO 1162 OF 1986 AND ORIGINATING SUMMONS NO 795 OF 1986
COOMARASWAMY J
10 DECEMBER 1990

Civil Procedure — Writ of possession — Whether irregular — Notice of proceedings not given to applicants

Landlord and Tenant — Equitable interest — Applicants an unincorporated society — Whether tenants or licensees of the premises — Whether applicants have an equity in the premises

This was an application by the second defendants to set aside a writ of possession taken out by the plaintiffs in respect of premises known as No 609/609A Bukit Timah Road, Singapore ('the premises') insofar as it related to No 609A which was the upper floor of the premises ('the upper floor'). The second defendants contended that the writ of possession was obtained irregularly in that notice of the proceedings under O 83 of the Rules of the Supreme Court 1970 had not been given to them and that they had merits in their defence to the plaintiffs' claim for possession.

Held, dismissing the second defendants' application:

(1) As a rule, writs of possession obtained irregularly ought to be set aside almost, if not altogether, as of right. However, in very exceptional cases where it is clear that setting aside the writ of possession would be an exercise in futility, the court ought not to act in vain.

(2) The second defendants could not claim an equity in the upper floor of the premises for the same reason they could not hold a tenancy, namely, that they had no legal personality as they were only a composite entity of fluctuating content and not a persona legalis. Once it was conceded that the second defendants could not in law hold a tenancy, they had from the outset absolutely no defence to the plaintiffs' claim.

Cases referred to

1 *Minet* v *Johnson* [1886-90] All ER 586 (refd)
2 *Singapore Shui Hing Co (Pte) Ltd* v *Singapore Sing Hua Poey Chin Association & Ors* [1976] 1 MLJ 217 (refd)
3 *Ang Bock Chwee* v *Lim Huan Hee* [1982] 1 MLJ 174 (refd)
4 *Vengadasalam* v *Khor Soon Weng* [1985] 2 MLJ 449 (refd)

Kan Ting Chui for the applicants/second defendants.
Lee Mun Hooi for the respondents/plaintiffs.

Cur Adv Vult

Coomaraswamy J: This was an application by the second defendants in these proceedings to set aside a writ of possession taken out by the plaintiffs in respect of premises known as No 609/609A Bukit Timah Road, Singapore ('the premises') insofar as it related to No 609A which was the upper floor of the premises ('the upper floor').

After hearing counsel for the second defendants and the plaintiffs, I dismissed the application with no order as to costs. I now give my reasons.